IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE EIGHTH DAY OF JULY
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE GOPALA KRISHNA TAMADA

WRIT PETITION NO : 16918 of 1992

Between:

N. Venkataiah S/o. Sri Yadagiri
A.P. Residential Educational Institutions Society, Hyderabad. resident of Hyderabad.

..... PETITIONER

AND

1. The Vice Chairman, A.P. Residential Educational Institutions Society, Hyderabad.

2. The Chairman, A.P.R.E.D., Society, Hyderabad.

.....RESPONDENT(S)

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ or Direction more in the nature of Writ or Mandamus by declaring the action of the first respondent in imposing the penalty of stoppage of one increment for one year without cumulative effect under proceedings Rc.No.868/C2-2/91, dt.20.5.91 and the confirmations orders of the second respondent in Rc.No.868/C2-2/91, dated 13.12.91 as illegal, arbitrary, against the principle of natural justice and against the service (discipline & appeal) rules of the Andhra Pradesh Residential Educational Institutions Society, 1972 and consequentially direct the first respondent to release the increment and treat the period of suspension from 17.3.89 to 28.2.90 as duty period with all consequential benefits like that of arrears of pay, salary, increments etc.

For the Petitioner: MR.P.V.S.S.S.RAMA RAO, Advocate

For the Respondents.: Government Pleader for Higher Education and Mr.Moola Vijaya Bhaskar, SC for A.P.R.E.I.S. The Court Made the Following :

-

ORAL ORDER:

The petitioner, who was working as an accounts officer in A.P.Residential Educational Institutions Society at Hyderabad, filed this present writ petition, questioning the proceedings of the 1st respondent in RC.No.868/C2-2/91, dated 20-5-1991, which was confirmed by the orders of the 2nd respondent in his proceedings RC.No.868/C2-2/1991, dated 13-12-1991.

The petitioner, who was appointed as an Upper Division Clerk in the department of Treasury on 5-7-1976, was deputed to the A.P.Resdential Educational Institutions Society at Hyderabad. While the petitioner was on deputation, on account of certain irregularities alleged to have been committed by the petitioner, the 1st respondent initiated disciplinary proceedings and appointed an Enquiry Officer. The Enquiry Officer, after holding a preliminary enquiry submitted his report pursuant to which the charge sheet was issued to the petitioner. The explanation offered by the petitioner, was not satisfactory to the disciplinary authority i.e., the 1st respondent, who took a lenient view of imposing a minor penalty i.e., the penalty of stoppage of one increment for one year without cumulative effect by his proceedings dated 20th May, 1991 against the petitioner. The said order was questioned in appeal before the 2nd respondent. However, the 2nd respondent confirmed the orders passed by the 1st respondent. Hence the present writ petition.

The main thrust of the learned counsel for the petitioner is that the very proceedings culminated in imposition of the penalty of stoppage of one increment is without jurisdiction as the petitioner is only on deputation and the respondents have no jurisdiction whatsoever to impose any penalty.

The learned counsel for the petitioner has drawn my attention to the Service (Discipline and Appeal) Rules of the A.P.Residential Educational Institutions Society, 1972.

The learned standing counsel appearing for the respondents No.1 and 2 submitted that the petitioner is on deputation since 1976 and he was promoted to various categories from 1976 to 1989 and all this clearly establishes that the petitioner is an employee of the Society and as such the action of removing him from service is within the jurisdiction of the society.

In the light of the said submission, it is necessary to extract Rule 22 of the Service Rules made in the year 1972 and it reads thus:

> **Rule 22:** "The persons deputed from the State Govt.of A.P. shall be governed by the A.P.Civil Services (classification, control and appeal rules) provided that where punishment under the rules is warranted the procedure prescribed in these rules shall be followed and the enquiry report together with the findings, of the Secretary of the Chairman, as the case may be, shall be forwarded to the Head of the Department from which the incumbent was taken into the service of the Society on deputation for the issue of final orders thereon."

From the above rule it is very clear that the 1st respondent has no jurisdiction because the petitioner, at the relevant point of time was a Government employee and working in the respondent-society only on deputation. If the disciplinary authority felt that the preliminary enquiry report warrants imposition of punishment, he ought to have referred the matter to the head of the department i.e., the department of Treasuries from which the petitioner was taken into service of the society on deputation for the issue of final orders.

In the instant case as the impugned proceedings dated 20-5-1991 issued by the 1st respondent as confirmed by the 2nd respondent in Proceedings dated 13-12-1991, are without jurisdiction and thus, this Court has no hesitation to hold that the orders are liable to be set aside and accordingly, the said orders are hereby set aside.

The writ petition is allowed accordingly. No costs.

_____

8th July, 2004.

Mrb

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this Thursday the Eighth day of July, Two thousand and Four.

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1. The Vice Chairman, A.P. Residential Educational Institutions Society, Hyderabad.

2. The Chairman, A.P.R.E.D., Society, Hyderabad.

3. Two CCs to G.P. for Higher Education, High Court of A.P., Hyderabad.

4. Two CD copies.